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SHORT LITERATURE NOTICES

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Fleck, L.: 2009, *Just Caring. Health Care Rationing and Democratic Deliberation*. Oxford: Oxford University Press. 460 pages. ISBN 987-019512804-8. Price: £28.99

What does it mean to be a "just" and "caring" society when we have only limited resources to meet virtually unlimited health care needs? In *Just Caring. Health Care Rationing and Democratic Deliberation* Leonard Fleck identifies health care rationing as *the* moral problem of contemporary health care. At present, millions of Americans go without health insurance, thousands of whom die prematurely, unable to afford the health care needed to save their lives. If these facts run contrary to our sense of justice, as the author believes they do, health care rationing decisions are necessary and a fundamental reform of the American health care system is warranted.

Although *Just Caring* seems to be written for an American public primarily, the book is extremely interesting for Europeans as well. Firstly, Fleck provides us with a very detailed account of the present state of the American health care system. Secondly, the problems Americans and their health care have to deal with are not unique to the United States. Although the American system seems to result in inequities Western Europeans particularly are largely unfamiliar with, at a more fundamental level both sides of the Atlantic share an interest in tackling the same problems: ageing populations, advancing medical technology and rising costs. In the end every health care system faces the challenge of meeting virtually unlimited health care with limited resources.

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First of all, the author argues convincingly the inescapability of health care rationing. The so-called "efficiency first" approach, defended by policy analysts who hold that health care rationing is unnecessary once all the waste is removed from the system, is misleading in that the proposals they put forward are very often disguised rationing decisions themselves. Fleck makes quite clear that greater efficiency, more astute health care management, or finding the right incentives to shape the behavior of patients or physicians is not going to obviate the need for rationing decisions with life and death consequences for different individuals or different groups of individuals.

If an individual is in need of health care but is denied access to health care, such an individual is affected by a rationing decision if that health care is available to others. Such decisions are not necessarily morally wrong by themselves, but the problem is that they tend to be implicit. Nowadays, rationing decisions are almost never visible and explicit as rationing decisions. The reasoning is very seldom public and outsiders are denied the opportunity to correct possible errors. It is not open to critical assessment. Furthermore, implicit rationing tends to disadvantage the weak and vulnerable in society, as is made painfully clear by the numerous examples given by the author. Of course, as phenomenon implicit rationing is not unique to the American health care system.

Rationing is primarily a moral problem that ought to be resolved in accordance with the requirements of morals and justice. Economic, managerial and organizational considerations come second. Since rationing is generally implicit, Fleck argues, there is no assured rational relationship between medical need or likelihood of medical benefit and the care that is actually provided. Secondly, and equally important, there is no assured connection between the values that drive implicit rationing decisions and the values of

the patients who will be most affected by them. Therefore, rationing decisions are in need of public justification.

Moreover, rationing should be the result of processes of rationing democratic deliberation and it will be fair if all who will be affected by rationing decisions have a fair opportunity to participate in these processes. Since no one has a moral right to impose rationing decisions on others if they are unwilling to impose those same rationing decisions on themselves in the same medical circumstances, all rationing decisions will ultimately be freely self-imposed.

Drawing from extensive experience with deliberative community dialogues (with which European readers are likely to be unfamiliar, unfortunately) Fleck sets out the ground rules for civic engagement in honest rational democratic deliberation, before proposing specific reforms that are perhaps more of interest to American readers (the introduction of a single payer system, hard budgets, etc.).

Leonard Fleck has written a well-researched and important contribution to health care reform. His answer to the problem of just distribution of health care is some kind of ongoing societal conversation. What is needed to get that conversation up and running the author describes at length. Whether such an idea will materialize in American politics is yet to be seen.

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Baertschi, B.: 2009, *La neuroéthique. Ce que les neurosciences font à nos conceptions morales*. Paris: Éditions La Découverte. 165 pages. ISBN: 978-2707157096. Price: € 18

Neuroethics has been broadly defined as the study of the ethical, legal and social implications of neuroscience (Judy Illes). The book by Bernard Baertschi of the University of Geneva represents to my knowledge the first attempt to offer an account of this emerging field within the French-speaking world.

Following Adina Roskies, the author distinguishes two main divisions of neuroethics: the *ethics of neuroscience,* and the *neuroscience of ethics*. The first one can be subdivided into two groups of topics: the first concerns the ethical issues in the design and conduct of neuroscientific studies, and includes topics already familiar to those working in bioethics, such as informed consent, privacy, risk assessment, etc., but which are specifically applied to the field of neuroscience. On the contrary, the second subdivision of the ethics of neuroscience is truly novel. It aims to investigate the impact of our growing understanding of brain function on our ethical, social, and philosophical conceptions. It includes issues like personal identity, freedom and responsibility, consciousness, and the mind–body problem. Most of the topics covered by Baertschi's book are relevant to this second subcategory of issues. The second main division of neuroethics, the neuroscience of ethics, is interested in investigating the brain bases of moral cognition and ethical decisions, and is covered in the third chapter of the book.

The volume is divided into four chapters. The first chapter outlines the important role that emotions play in our moral decisions. According to the author, saying that our moral choices are, or should be, rational and conscious does not imply that emotions should be excluded from them, as some philosophers, Kant in particular, tend to argue. Precisely the new neuroscientific discoveries show that emotions are to some extent related to a group of structures in the brain, and can play a positive role in our moral choices.

The second chapter deals with an even more complex dilemma: is the notion of personal freedom compatible with neurosciences? In other words, are we responsible for our actions if they are physically caused by our brains? Baertschi defends a compatibilist view according to which brain determinism is compatible with free will, on the grounds that they operate at two different levels: while free will belongs to a metaphysical dimension, determinism is an "internal" condition of individuals. He claims that, insofar as people are not externally coerced and are mentally competent, they can be regarded as "free" and therefore "responsible" for their deeds, even if they are determined by their brains to act in a particular way. This position is, of course, not without its problems. One may wonder whether compatibilism does not beg the real question about personal freedom. Is the lack of coercion and of any internal incapacitating condition really sufficient for free will? Does not the common understanding of free will refer to *genuine* alternate possibilities for action, rather than merely the absence of negative conditions?

The third chapter explores the moral problems posed by brain imaging, and the supposed possibilities of "reading" the people's thoughts with help of the new instruments provided by neurosciences. In this regard, Baertschi is, with reason, rather cautious about saying that brain scanning really reproduces—or may one day reproduce—the thoughts of individuals.

Finally, the fourth chapter offers a detailed account of the current debate on the ethical acceptability of brain enhancement. The author provides an insightful analysis of the pros and cons of various neurotechnologies that may enhance cognitive and behavioural skills. In particular, he examines the argument that neuroenhancements would interfere with people's ability to live *authentic* lives.

In sum, this book fills a real gap in the literature in French on neuroethics, and represents a very valuable contribution to a better understanding of this emerging and challenging field.

Roberto Andorno
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Cortina, A.: 2009, *Las fronteras de la persona. El valor de los animales, la dignidad de los humanos*. Madrid: Taurus. 240 pages. ISBN 978-84-306-0765-5. Price: € 19, 50

The development of Adela Cortina's philosophy since her now classical *Ética Mínima* (1986) up to her recent award-winning *Ética de la razón cordial* (2007) has contributed to building up of one of the most fruitful and original lines of thought in the contemporary philosophical scene. The roots of her thought have to be sought in Kant, Habermas and Apel. In her new book, Adela Cortina takes an in-depth look at the moral questions stemming from our relationships with other animals. Is it possible to respect human dignity and the value of non-human animals at the same time? Upon what philosophical ideas must we base our standpoint? Is it really necessary to recognize animal rights?

Before giving us her own answer, Adela Cortina offers a review of the major current ideas. In the first place, she speaks of Contractualism, with its aspects of value and its limitations. Animals, of course, cannot be parties to the social contract. But they can benefit from it, as long as the contract goes beyond the mere selfishness of the mutual benefit of its signatories. Such a procedure would give them protection without the need to give them any doubtful rights prior to the social pact.

The second philosophical current which comes in for her criticism is Utilitarianism, some of whose exponents seem to display a certain incoherence. On the one hand, they claim rights for animals but, on the other hand, they do not seriously believe even in the existence of human rights as natural rights or pre-social ones. This shows that, for them, to claim rights for animals is just a rhetorical or political strategy.

She goes on to analyse Amartya Sen's capabilities approach. Its application to the case of animals, as mooted by Martha Nussbaum, is rather lacking on some points, according to Adela Cortina. The fact that animals are able to enjoy flourishing lives does not mean that they have rights. The title of Cortina's new book, *Las fronteras de la persona* ("Frontiers of the Person") could be seen as a response to Nussbaum's *Frontiers of Justice*.

Fourthly, a review is offered of the theories of inherent value. The author detects again a passage from values to rights which is not satisfactorily justified in these theories.

The author's personal position could be summarized thus: only human beings have any dignity prior to any social agreement. The mutual recognition of this in history becomes what we know as human rights. Nevertheless, this mutual recognition of human dignity should not be understood in terms of species egoism or simple mutual benefit. It goes beyond that and can benefit others. It must benefit all those living beings who, like animals, have inherent value. Therefore, to avoid animals suffering, it is neither necessary, nor a good idea to extend and dilute the function of rights.

One question remains to be answered: Do disabled human beings possess dignity? Adela Cortina's answer is emphatically affirmative. Although they are unable to exercise all their capabilities, this "does not make them members of other species, but people who have to be helped" (p. 225).

To sum up, this is a book that examines in depth the moral questions of our relationship with animals, while giving a clear presentation of the different philosophical positions on this issue and offering the author's own original proposition, which is well grounded and eminently sensible.

Alfredo Marcos
Valladolid, Spain

Seidel, W.: 2009, *Das ethische Gehirn*. Heidelberg: Spektrum Akademischer Verlag. 221 pages. ISBN 978-3-8274-2126-5. Price: € 19,95

The question whether subjectively *free* choices are determined by specific brain activity several seconds ahead of time occupies an important place in the emerging field of neuroethics. After Benjamin Libet and his numerous followers, it is now John-Dylan Haynes who is disturbing our idea of a free will by identifying via fMRT a certain brain activity in the parietal and prefrontal cortex. In this brain activity Haynes found encoded a decision up to 10 s before it entered awareness. But not only empirical studies like this raise new controversies in this field. Philosophers have debated about the free will for more than two millennia. In his book about "The ethical brain", Wolfgang Seidel, a former surgeon, who is now publishing on emotional psychology, not only tries to give a review of core arguments of this debate. He also aims at building a bridge between diverging views and at pointing out implications for our view of moral responsibility.

Seidel starts his book by introducing the debate about the existence of a free will and its main arguments. He then continues in chapters 2 and 3 by giving the wider background of the discussion and explaining the decision-making process from a scientific (and causalistic) point of

view. In chapter 4, Seidel presents his main psychology-based arguments for an existence not of a *free*, but of an *own* will, with which he characterizes the individual ability of the brain to modify relevant causes. After highlighting key benefits of experiencing the freedom of our will from a psychological point of view (chapter 5), Seidel tries to integrate in the following chapter the results of neuroscientific research by Libet and Haynes into his concept of an own will. According to Seidel, even if there is indeed unconscious brain activity, in which a decision is encoded several seconds before it reaches awareness, this does not mean that our own conscious will is irrelevant for the decision-making. Not the actual decision-making and initiation of action is the function of our conscious will, but long-term processes of pondering, planning and balancing which in the end do result in the described modification of relevant causes. With regard to our perception of moral responsibility Seidel outlines in chapters 7 and 8 that distinguishing between a free or own will has no relevant implications for our idea of guilt or culpability. Due to its ability to modify relevant causes and thereby to govern behaviour, the brain nevertheless is responsible for actions.

Das ethische Gehirn (The ethical brain) can be a useful introduction into the debate about the free will from a scientific point of view, and provides valuable insight into some recent research in the field of psychology. It is written in a clear language and can be regarded as a popular scientific book, in the best sense of the expression, as it makes a complex issue accessible to a broad readership.

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Sass, H.M.: 2007, *Bioethics and Biopolitics. Beijing Lectures by an European Scholar.* Xian City: Fourth Military Medical University Press. 430 pages. ISBN 978-7-81086-296-7/R·278. Price: RMB (China Yuan Renminbi) 32.00

This volume comprises 10 lectures on bioethics and biopolitics (both in English and in Chinese), which were given by Professor Hans-Martin Sass at the classes and workshops with students and colleagues at Peking Union Medical College. For 25 years, Professor Sass has been engaged in exchanging knowledge and experiences with Chinese scholars. As I was reading this book, I was astonished to find that he is very familiar with the traditional Chinese literature on medical ethics. The issues in this volume often start with a multicultural approach, and then they are transformed into golden rules, which are pretty compatible with Chinese culture.

Chapter 1 discusses the similarities and controversies of bioethics from various traditional backgrounds. The author emphasizes that the development of a Chinese bioethics should be based on its own cultural heritage rather than importing sets of principles from other traditions. Following the Confucian physician Gong Tingxian's model of interactive rules for the physician and the patient, the author presents a set of eight interactive golden rules for stakeholders in health care. Chapter 2 focuses on the existence of universal ethics. Nevertheless, its expression might vary with different emphases across the culture. Hence, in the practice of treating "moral strangers", we need to hold the view that respect for human dignity includes the respect for human diversity, as well as for conceptual differences and dissenting positions on deep philosophical and religious convictions.

Chapter 3 presents an interactive model of communication-in-trust and cooperation-in-trust, which includes three possible methods, the narrative model, the risk assessment model, and the checklist model. Chapter 4 demonstrates that the Internet has the power to contribute to the democratization of medical knowledge, as it provides lay person information platform for diseases, health and wellness. On the other hand, a certain level of quality assurance and quality control is necessary in order to protect people from fraud and disinformation and to make communication-in-trust possible. The following chapters, from 5 to 9, discuss in detail different aspects of bioethics, including individual health risk assessment, medical research, human experimentation, public health care, and health care crisis. Finally, chapter 10 proposes that the better biopolitics and health care policy should be aimed at health care rather than merely disease management, by providing useful information to individuals and empowering them to care for health. In addition, it is also important to establish just and efficient health care systems.

This book makes a valuable contribution to our understanding of bioethics and biopolitics from a cross-cultural point of view. I hope it could serve as a reference book for the reformation of the Chinese medical health system.

Xiaochen Hu
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Illhardt, F.-J. (ed.): 2008, *Die ausgeblendete Seite der Autonomie. Kritik eines bioethischen Prinzips.* Münster: LIT Verlag. 238 pages. ISBN 978-3-8258-1113-6. Price: € 34, 90

This book is a result of the editor's many years of experience as a member of the ethics committee of the University of Freiburg, Germany. It offers not so much a general critique of the principle of respect for autonomy—as the subtitle may suggest—but rather a collection of interesting papers highlighting some of the limitations of patient autonomy in various clinical contexts.

The first part of the book presents various autonomy-related dilemmas in clinical practice. Monika Keller offers a psychological perspective on informed consent in situations in which patients experience disease, existential fear, and suffering. Michael Hüll stresses the relevance of trust in medical decision-making and argues against a strategy which merely focuses on information transfer within the doctor-patient-relationship. Based on the results of a questionnaire study, Gerhild Becker and Carola Xander argue towards shared decision-making in palliative care. Afterwards, Klaus Henninghausen and Eberhard Schulz discuss ethical aspects related to decision-making competence in children and adolescents, whereas Inga Westermilies examines issues arising in multicultural contexts. The focus of Franz Josef Illhardt's contribution is on medical research involving vulnerable persons.

The second part of the book illustrates several theoretical frameworks. These serve to shed a different light on the debate on autonomy which—at least in medical ethics—often is dominated by aspects such as independence and free decision-making. First, Joachim Boldt gives an introduction to the role of autonomy in Søren Kierkegaard's thinking. Then Annette Hilt discusses Helmuth Plessner's concept of autonomy which is tightly linked to man's eccentricity and Plessner's characterization of man as "homo absconditus". Rolf Lachmann's contribution is written from the point of view of process philosophy, whereas Martin W. Schnell examines autonomy in Paul Ricoeur's philosophy.

The contributions to the third part of the book are about ethical issues in doctor-patient-relationships with a particular focus on aspects of relevance beyond patient autonomy. Klaus Dörner accentuates the need for a good and responsible doctor. Hildburg Kindt emphasizes the relevance of an open dialogue, reciprocity and respect in the doctor-patient-relationship. Franz Josef Illhardt argues towards shared decision-making. Gabriele Lucius-Hoene's contribution is written from the point of view of narrative ethics, whereas Heinz Schott discusses doctor–patient-relationships from a historical perspective.

In sum, the book provides very thoughtful texts worth reading on the limitations of patient autonomy. What one misses, however, is a chapter giving a balanced and comprehensive view on the concept of autonomy—which in fact is not as individualistic as some of the authors seem to assume.

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Mainz, Germany

Freeman, M. and Goodenough, O. (eds.): 2009, *Law, mind and brain.* Aldershot: Ashgate. 430 pages. ISBN 978-0-7546-7013-1. Price: $ 69,95

This volume, edited by Michael Freeman and Oliver R. Goodenough, offers a good outline of an important and topical issue within the field of neurosciences. Whereas recent publications have mainly focused on criminal law aspects of the use of neuroscientific measurement techniques in court trials, the book by Freeman and Goodenough explores further legal implications, which might become relevant and are in need of legal regulation. This is why the range of topics reaches from more general topics like "Law, responsibility and the brain", over most discussed items such as brain imaging and courtroom evidence, and reaches out to questions about involuntary treatment, problems of determining a person's capacity and therefore an adult's opportunity to file a suit in court trials, as well as questions on end-of-life decisions, with special regard to research projects, and also dealing with mostly overseen aspects of family law, which becomes increasingly important in the context of neuroscientific developments.

The book makes clear that society is on the way to a new era of neuroscientific advances and that the amount of new legal problems will lead to the emergence of a distinct neurolaw. Unlike former publications, the book shows that the impact of neurosciences is not circumscribed to criminal law. It expresses the hope that, more generally, neurosciences might one day be able to help understand our intuitions concerning free will and responsibility, which would be a giant step for several fields of the neurolegal debate. Regarding involuntary treatment, the book suggests to no longer distinguish between the categories of mental and physical disorders, but to replace these categories by the more general field of a unique involuntary treatment scheme (special regard is paid in this context to the right of the children). This leads to the next topic, which deals with the thesis that understanding the brains of children might be the key to understand the thoughts of juvenile offenders. The neuroscientific debate should therefore raise questions about current concepts of culpability, accountability and punishment, especially with regard to the question whether or not standards of adult's trials should be transferred to cases of juvenile offenders or not. Later in the book it is shown that recent neuroscientific developments might also have an impact on legal regulations about end-of-life decisions.

In sum, this excellent treatise not only contains a collection of very interesting papers characterized by in-depth analysis of most relevant aspects of neuroscientific developments, but also corrects a common misunderstanding, according to which only criminal law is challenged by neurosciences.

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